



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Chuck Fleischmann for Congress, Inc.
Randall Hebert, Treasurer
P.O. Box 11091
Chattanooga, TN 37401

NOV 17 2016

RE: MUR 6909

Dear Mr. Hebert:

On January 6, 2015, the Federal Election Commission notified Chuck Fleischmann for Congress, Inc., and you in your official capacity as treasurer (the "Committee") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. Based upon information contained in the complaint, as well as information provided by the Committee, the Commission decided to exercise its prosecutorial discretion to dismiss the complaint and close the file in this matter. Accordingly, the Commission closed its file in this matter on November 9, 2016. The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Chuck Fleischmann for Congress Committee, Inc. MUR 6909
Randall B. Hebert, as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed by Dennis E. Norwood ("Complainant") on December 19, 2014, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Chuck Fleischmann for Congress Committee, Inc., and Randall B. Hebert in his official capacity as treasurer ("Committee"). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

The Complainant alleges that the Committee violated the Act when it accepted prohibited and excessive contributions and by utilizing contributions designated for the 2014 general election during the 2014 primary. The allegations in the complaint are based on two Requests for Additional Information ("RFAs") sent to the Committee by the Commission's Reports and Analysis Division ("RAD").¹ First, the Complainant alleges that the Committee did not resolve the issue of a \$20,000 transfer from a purportedly unauthorized fundraising entity, Texas Opportunity Partnership ("TOP").² Second, the Complainant alleges that the Committee did not redesignate to the general election excessive primary election contributions.³

¹ Compl. at 1-2 (Dec. 19, 2014).

² Texas Opportunity Partnership is a joint fundraising committee that registered with the Commission in February 2014 and terminated in May 2014.

1 The Committee responds that it timely resolved the issues raised in the two RFAs.⁴
2 Specifically, the Committee asserts that it received less than \$4,000, not \$20,000, from TOP, a
3 fundraising organization, and it followed RAD's instructions and amended its Statement of
4 Organization to authorize TOP as its joint fundraising representative.⁵ Further, the Committee
5 states it redesignated or refunded the excessive contributions, in accordance with RAD's
6 instructions, and it amended its disclosure reports accordingly.⁶

7 An individual could not make a contribution to a candidate with respect to any election in
8 excess of the legal limit, which was \$2,600 per election during the 2014 election cycle.⁷ A
9 primary election and a general election are each considered separate "elections" under the Act,
10 and the contribution limits are applied separately with respect to each election.⁸ Candidate
11 committees are prohibited from accepting excessive contributions.⁹ If a committee receives a
12 contribution that appears to be excessive, the committee must either return the contribution to the
13 donor or deposit the contribution into its federal account and keep enough funds in the account to

³ *Id.* at 1. The Complainant also alleges that the Committee committed "voter fraud" by using an image of an opposing candidate in a mailer and misrepresenting that candidate's position on an issue. *Id.* at 3. To the extent that this claim could be read to allege that the Committee committed fraudulent misrepresentation, see 52 U.S.C. § 30124(a); 11 C.F.R. § 110.16, that claim would fail because a reasonable person would not believe that the Fleischman Committee was speaking on behalf of the opponent, and the mailer contains a disclaimer stating that the Committee paid for it. Further, Complainant alleges that despite the redesignation of campaign contributions, the Committee used general election funds during the 2014 primary. There is, however, no information to suggest that the Committee improperly used general election funds.

⁴ Resp. at 1 (Feb. 9, 2015).

⁵ *Id.* at 1-2.

⁶ *Id.* at 1. The Committee's treasurer further states that he does not believe that the flyer presented by the complainant violates the Act, and professes that he handled only the responsibilities of a committee treasurer, and knows nothing of the Committee's campaign strategy or advertisements.

⁷ 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

⁸ 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6).

⁹ 52 U.S.C. § 30116(f).

1 cover all potential refunds until the legality of the contribution is established.¹⁰ Alternatively, a
2 committee may “presumptively redesignate” the excessive portion of a contribution to another
3 election, provided that, within 60 days of receipt of the contribution, the committee notifies the
4 contributor of the amount of the contribution that was redesignated and of the option to request a
5 refund.¹¹ Finally, each candidate for federal office shall designate in writing a political
6 committee to serve as its principal campaign committee, and may also designate a political
7 committee established solely for the purpose of joint fundraising as an authorized committee.¹²

8 The Committee concedes it received excessive contributions, but maintains that it
9 properly and timely responded to the Commission’s RFAs by redesignating the primary
10 contributions for use in the 2014 general election, and amending its disclosure reports to reflect
11 these redesignations. The Committee also, in response to the RFAI, amended its Statement of
12 Organization to designate TOP as a joint fundraiser on behalf of the Committee.

13 Therefore, in furtherance of the Commission’s priorities, relative to other matters pending
14 on the Enforcement docket, and in light of the corrective actions taken by the Committee, the
15 Commission exercised its prosecutorial discretion and dismissed the matter.¹³

¹⁰ 11 C.F.R. § 103.3(b)(3) and (4).

¹¹ 11 C.F.R. § 110.1(b)(5)(ii)(B) and (C).

¹² 52 U.S.C. § 30102(e)(1) and (3).

¹³ *Heckler v. Chaney*, 470 U.S. 821 (1985).